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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

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) CC Docket No. 96-45/  
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Federal-State Joint Board on  
Universal Service

COMMENTS OF

TELECOMMUNICATIONS FOR THE DEAF, INC.

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## **SUMMARY**

Telecommunications for the Deaf, Inc. (“TDI”) files these initial comments to urge the Commission to provide funds from the Universal Service Fund for two kinds of assistive technology for those members of the public with hearing and vision disabilities. TDI seeks funding for Braille TTYs, which combine the traditional TTY function with a Braille read-out device. These devices are extremely expensive and are not currently in widespread use because their cost of approximately \$6500 is prohibitive for the segment of the population which requires such technology to be able to communicate. Similarly, two line voice carry over technology (“2LVCO”), which requires two phone lines with conferencing capability, would allow those with hearing disabilities to communicate more effectively and efficiently by using a second line for text display from a relay center.

The Commission’s obligation under section 254 of the Communications Act is to make service available to all the public, including the hundreds of thousands of Americans without access to communication on ordinary voice grade telephone facilities as a result of hearing and/or hearing and vision disabilities. The requirements of section 255 of the Act on equipment manufacturers and carriers to provide accessible equipment and services if readily achievable , while very meaningful to those individuals with disabilities, is not mutually exclusive with the provision of funding from the USF.

Those with significant hearing and vision disabilities cannot use an ordinary voice grade line and equipment to communicate with others, whether for ordinary social situations, or for education, health, or safety reasons. Accordingly, the Commission should modify the definition of ordinary voice grade service as it currently appears in the Universal Service docket to specify that such service encompasses equipment and arrangements adequate to meet the needs of Americans with disabilities. Doing so is consistent with section 254(c)(1)(A)-(D) of the Communications Act, and with Title IV of the Americans With Disabilities Act.

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**COMMENTS OF  
TELECOMMUNICATIONS FOR THE DEAF, INC.**

Telecommunications for the Deaf, Inc. ("TDI"), by the undersigned counsel, herewith submits its initial comments in the above-captioned matter pursuant to the Public Notice of August 21, 2001 ("Notice").<sup>1</sup> In that Notice the Federal-State Joint Board on Universal Service ("Joint Board") invites comments on its review of the definition of universal service. In 1997 the Commission designated nine "core" services that are eligible for universal service support. Thereafter the Commission asked the Joint Board to review the list of the eligible services to consider modifications, if the Joint Board concluded such modifications are warranted.<sup>2</sup> TDI is pleased to participate in this review, and recommends that the Commission add two kinds of service to the list: (1) orphan telecommunications equipment such as Braille-based TTY equipment, and (2) second line service and conference calling for two line voice carry over service ("2LVCO"). Both would materially aid the large numbers of individuals whose disabilities make it difficult or impossible for them to use ordinary telecommunications equipment. This would allow the Universal Service Fund to provide users of these products and services affordable access to voice grade telephone communication. Without a change in policy,

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<sup>1</sup> Public Notice FCC 01-J-1, *rel.* Aug. 21, 2001.

<sup>2</sup> First Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8807-25, ¶¶ 56-87 (1997) (subsequent history omitted). *See also* Twelfth Report and Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000).

people with disabilities who need but are unable to afford Braille TTYs and/or 2LVCO will remain cut off from telephone communication despite the mandate of the Universal Service Fund to provide **affordable** telephone communication to **all** Americans.

In a recent speech, Chairman Powell noted the following:

First principles first. It is beyond question that our objective has been, and should remain, achieving ubiquitous availability of service at affordable rates for all Americans. It is the right goal, and it is the law.<sup>3</sup>

TDI concurs.

## **I. INTRODUCTION**

TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late deafened, and deaf-blind. TDI's mission is to promote equal access to media and telecommunications for the aforementioned constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy. Only through equal access will the twenty-eight million Americans who are deaf, hard of hearing, late deafened, and deaf-blind be able to enjoy the opportunities and benefits of the telecommunication revolution to which they are entitled. Furthermore, only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

Joining in TDI's comments in this proceeding are the National Association of the Deaf (NAD), the Consumer Action Network (CAN), Self Help for Hard of Hearing People (SHHH),

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<sup>3</sup> Remarks of Michael K. Powell at the National Summit on Broadband Deployment, Washington, D.C. October 25, 2001, at 6.

and the Braille TTY Task Force. Established in 1880, the NAD is the nation's oldest and largest consumer-based national advocacy organization safeguarding the civil and accessibility rights of deaf and hard of hearing individuals in the United States of America. Policy and legislative issues addressed by the NAD cover a broad range of areas, including education, employment, health care, human services, rehabilitation, telecommunications, and transportation. Established in 1993, the CAN serves as the national coalition of organizations representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. CAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

SHHH is a nonprofit, consumer, educational organization, founded in 1979, and devoted to the welfare and interests of those who cannot hear well, their relatives and friends. SHHH has 17,000 members and 250 chapters in 50 states. It is the largest consumer organization in the United States representing people with hearing loss. As the voice for hard of hearing people, SHHH strives to improve the quality of life for hard of hearing people through education, advocacy, and self help. SHHH influences national policy to improve the rights, services, research and public awareness of the rights and needs of people with hearing loss. Also included in this filing are comments based on input and statistics provided by prominent individuals representing the American Association of the Deaf-Blind (AADB) as well as members of the Braille-TTY Task Force. The Braille TTY Task Force, of which TDI and AADB are members, is an ad hoc group of technical experts and consumers led by the State of Washington seeking to develop the next generation of TTYs that are user friendly to those who depend on Braille to communicate by telephone. This task force was established last summer to explore ways and

means to find funding to offset development costs for companies, so that they will produce a new device.

The Notice alludes to the statutory language appearing in section 254(c)(1) of the Act that “[u]niversal service is an evolving level of telecommunications services that the Commission shall establish periodically... .”<sup>4</sup> It asks, in light of section 254 of the Act, what services, if any, should be added to or removed from the list of core services eligible for federal universal service support, and how those core services should be defined, taking into account the definitional criteria set forth in section 254(c)(1)(A)-(D). The Notice seeks comment also on the costs of any proposed modifications, the availability of functional substitutes for a service, and whether support for the service would affect competition in its delivery.<sup>5</sup>

TDI, *et al.* recommends that the Commission redefine “voice grade” service in the context of USF funding to include Braille TTY and second line voice carry-over services within the definition of voice grade service. Doing so would help to increase the availability of voice-grade telecommunications services to persons with vision and hearing disabilities. By increasing such availability the Commission will simply be fulfilling the mandate of section 254 to make universally available to the publicly defined classes of services, in this instance the simple and basic capacity to place and receive ordinary voice telephone calls. It is hard to imagine a public benefit more basic than the provision of such service to the 28 million Americans who have disabilities and particularly to the approximately 400,000 who are severely visually and hearing impaired. In a nutshell, Braille TTY and 2LVCO will enhance use of the relay services mandated

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<sup>4</sup> 47 U.S.C. § 254(c)(1).

<sup>5</sup> Notice, at 2.

by Title IV of the ADA. In effect, these two assistive technologies bridge the gaps in current relay technology.

#### **A. Braille TTY**

As the rest of the world moves farther into the Information Age, many in the Deaf-Blind Community still struggle to achieve simple, dependable *access to the most basic telephone technology*. Hearing people can buy a phone that works for as little as \$10; hard of hearing or deaf people can buy a decent amplified telephone or TTY for \$70 - \$200. In contrast, Braille TTYs on the market today cost approximately \$6,500 each, and require sophisticated computer knowledge and training to operate and maintain. This cost is particularly troublesome because the average Deaf-Blind individual is undereducated and underemployed.

Both Braille TTY equipment and two line voice carry over arrangements would substantially assist members of the public who have varying degrees of hearing and/or vision disabilities in their communications activities. It bears emphasis that these activities can constitute far more than mere social intercourse: indeed, access to a simple voice grade line can be a matter of life and death. Furthermore, individuals who cannot communicate effectively over the telephone are unlikely to be economically productive. Government and private organizations maintain a variety of statistics about the incidence of hearing and sight impairment or loss within the population. Broad consensus on such numbers is difficult because both hearing and vision can be impaired to varying degrees. There is no question, however, that there is a substantial number of Americans who are severely impaired with respect both to hearing and vision. A recent estimate from the Helen Keller National Center and The National Information Clearinghouse on Children Who Are Deaf-Blind states that there are approximately 11,000 children and 35,000 to 40,000 adults in the United States who are legally blind in both eyes in



combination with severe to profound hearing loss. These individuals are unable to use a standard voice telephone, or a teletypewriter (TTY). Other statistics suggest that there are over 400,000 who are severely visually and hearing impaired, and over 56,000 who are totally deaf and totally blind.<sup>6</sup>

Considering that hearing and vision loss is often progressive, there is a potential for serving at least that many deaf-blind persons, if not more. But the known statistics are misleading, and could greatly understate the true extent of the need for Braille TTYs. It is reasonable to expect that the people all over the U.S. who are now using large visual displays will begin to need Braille TTYs as they grow older. There are diseases such as Multiple Sclerosis and Diabetes that affect the vision and hearing of many Americans. There is research being considered into the likelihood that premature babies, as they reach middle age, may be prone to combined vision and hearing loss.<sup>7</sup>

Braille TTY equipment is currently available from several companies. It consists of a TTY machine which has been combined, in one of various ways, with electronic Braille equipment for use by a braille user. That is, the input function, instead of using a traditional keyboard, relies on a specially configured device with braille characters, and the read-out, instead of a visual text display, provides a Braille surface for the user. By functioning in this way, these machines permit individuals who can neither hear nor see adequately to communicate with others.

Unfortunately, although the technology exists for the manufacture of Braille TTY machines, TDI is not aware of any companies which manufacture the entire unit; instead the final

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<sup>6</sup> Data supplied by Helen Keller National Center.

<sup>7</sup> *Ibid.*

product consists of modules -- the TTY module and the Braille reader module -- each manufactured by a different entity and then combined for sale. Only a handful of companies sell such equipment. The machines are very expensive and have proven generally unreliable, requiring frequent repair.<sup>8</sup> There are very few of them in use due to their high cost. At present such machines range from approximately \$5,000 to \$7,000, a cost which makes them inaccessible as a practical matter for all but a very small minority of those who have need of such capability. The low volume of purchase also makes it difficult for private sector firms to earn a profit on the manufacture or integration of Braille TTYs, and a number of firms previously engaged in this work have left the market.<sup>9</sup>

There are 27 states that have telecommunications equipment distribution programs. Additionally, the criteria for eligibility in some of those states are limited to those who are receiving some kind of income transfer from government, such as Aid to Families with

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<sup>8</sup> In the last thirty years, telecommunications equipment distribution programs and retailers across America have distributed/sold Braille TTYs that were manufactured by seven companies. In most cases the device uses a TTY (manufactured by one company) and combines it with some kind of Braille display (manufactured by a different company). Hybrids such as these have multiple problems interfacing the two components, and they are very susceptible to technical problems. Three of the seven devices are no longer in production. As far as we know the companies have ceased manufacturing because the customer base is so small that they cannot afford to invest any more capital.

<sup>9</sup> Many of the state equipment distribution programs distribute Braille TTYs upon request. The Florida Equipment Distribution Program ("FEDP") advises TDI that it will provide Braille TTY on request, even though the costs are quite high. If USF contributes to the cost of such equipment, the program could assist many people needing less expensive equipment and other assistive technology. According to James Forestall, Executive Director, Florida Telecommunications Relay, Inc., and President of Telecommunications Equipment Distribution Program Administrators, Florida has not aggressively pursued marketing this equipment due to unreliability and the complexity of the equipment. He has also advised TDI that when clients receive this equipment they are dissatisfied and wish to exchange it for another device. Unfortunately, Florida and a few other states with similar equipment distribution programs are limited to what can be distributed since some manufacturers have ceased to make them.

Dependent Children. In such states, this means that working people must save up \$7,000 just to be able to use the phone. These individuals are especially vulnerable in emergencies because the telephone network is not set up to accommodate individuals with such dual disabilities.

## **B. 2 Line Voice Carry Over**

Voice Carry-Over (VCO) is for people with hearing loss who prefer to speak for themselves in a telephone conversation. Using a VCO telephone or a voice phone and TTY on a single phone line, the VCO user speaks directly to the other person. Everything the other person says is typed by a Relay Operator and appears on the text display of the VCO user's VCO phone or TTY (used in combination with a voice phone). The VCO user reads the text directly and speaks instead of typing responses. Regular VCO relay services using a single line render the auditory characteristics of the other person's voice mute in order to provide the text to the VCO user without distortion.

Two line VCO, known as "2LVCO," provides greater access to telephone communication by permitting an individual with partial hearing loss to both hear the other person's voice and read the text of what the person is saying, using separate phone lines. 2LVCO allows a 2LVCO user to interact more naturally with the other person as the other person does not have to learn to say "GA" at the end of each turn. 2LVCO makes it possible to listen to the conversation while reading it on the text screen. It is also possible to interrupt the other party while he/she is talking just as in a traditional voice-to-voice call. 2LVCO relayed calls are much more functionally equivalent to the telephone communication utilized by people with normal hearing than VCO or TTY relayed calls. Anecdotally, we have heard that people with normal hearing called by 2LVCO are much less likely to hang up or refuse to cooperate

with the communication needs of the person with the hearing loss; 2LVCO is much less frustrating for both participants in the telephone call.

2LVCO also allows people with severe hearing loss to handle incoming voice phone calls. If a person with hearing loss receives a voice call s/he cannot understand; s/he can use conferencing calling to connect the voice call to the relay service and thereafter read the text on the second line. Single line VCO does not provide this capability for an incoming voice call. It is vitally important for people with disabilities to be able to communicate with incoming voice calls, such as voice calls from an intercom at a locked entry or from people who are not familiar with relay calls. If a person with hearing loss has relatives with cognitive or other disabilities who cannot or do not initiate relayed calls, it is critical for the person with the hearing loss to be able to make the telephone call accessible when other people are unable to do so.

Another benefit of 2LVCO is that it allows people to use their remaining residual hearing to pick up important non-verbal information like emotion, emphasis, timing, gender, accents, and other speech characteristics. Such non-verbal information is vital for understanding the other person more accurately. Regular VCO denies people with partial hearing loss the opportunity to hear any of the non-verbal information from the other person.

Since 2LVCO costs more than twice what a single line arrangement does, it is beyond the resources of a substantial number of individuals with hearing loss – many of whom can barely afford the costs of single line capability. However, 2LVCO can make calls less expensive overall than similar calls conducted via VCO or TTY because 2LVCO calls are faster. All people who communicate with 2LVCO users would benefit from the increased speed and accuracy of the communication. But the set-up is costly because of the need to pay for a second

line and for three-way conference calling capability. These arrangements are costly for many people, not just those who are economically disadvantaged.<sup>10</sup>

## **II. BRAILLE TTY EQUIPMENT AND SECOND LINE VOICE CARRY-OVER SERVICES SHOULD RECEIVE UNIVERSAL SERVICE FUNDING BY REDEFINING VOICE GRADE SERVICE IN THE USF CONTEXT**

TDI *et al.* recommends that the Commission redefine “voice grade” service in the context of USF funding to include the provision of Braille TTYs and the services required for 2LVCO within the definition of voice grade service. Doing so would help increase the availability of voice-grade telecommunications services to persons with vision and hearing disabilities. By increasing such availability the Commission will simply be fulfilling the mandate of section 254 to make universally available the publicly defined classes of services, in this instance the simple and basic capacity to place and receive ordinary voice telephone calls. It is hard to imagine a public benefit more basic than the provision of such service to the 28 million Americans who are hard of hearing or deaf, of whom it is estimated that approximately 4 to 5 million have severe hearing disabilities, and particularly to the approximately 400,000 who are severely visually and hearing impaired. Affordable Braille TTYs and 2LVCO service would provide access to the relay services mandated by Title IV of the ADA. These two assistive technologies would bridge the gaps in current relay technology.

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<sup>10</sup> According to “The Severely to Profoundly Hearing Impaired Population in the United States: Prevalence and Demographics,” (Project HOPE Center for Health Affairs, <http://www.projhope.org>), 53% of severely and profoundly hearing impaired people had family incomes below \$24,999. 15.4% had incomes below \$10,000. *See id.* at 22, 28. This survey estimated that 738,000 Americans had great difficulty using the telephone by voice because of their hearing loss (1994, 1995), but relied on self-reports for this estimate. Those numbers can be expected to be higher now since hearing loss has been increasing in the population as it ages. A conservative estimate would be that 400,000 people might be income-eligible for Universal Service funding in addition to benefiting from 2LVCO. Certainly more people with hearing loss could benefit from 2LVCO, but the tendency is for people with hearing loss not to use TTY equipment unless they absolutely can’t communicate without it.

**A. For Service To Be Universal, It Should Be Available To Those With Disabilities**

Universal service has been a fundamental goal of federal telecommunications regulation since the passage of the Communications Act of 1934. Indeed, as noted in *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5<sup>th</sup> Cir. 2000), the “FCC’s very purpose is to ‘make available, so far as possible, to all the people of the United States... a rapid, efficient, Nation-wide, and world-wide wire and communications service with adequate facilities at reasonable charges.’”<sup>11</sup> Section 254(c)(1) of the Act states that universal service “is an evolving level of telecommunications services that the Commission shall establish periodically..., taking into account advances in telecommunications and information technologies and services.”<sup>12</sup> It also provides that the preservation and advancement of universal service should take into account the need for quality services at reasonable rates, access to advanced services and reasonable comparability of access to such services in various regions of the country.<sup>13</sup> Section 254(c)(1) also sets forth four criteria by which to judge the core services eligible for federal universal service support:

- (A) those essential to education, public health, or public safety;
- (B) those which have been subscribed to by a substantial majority of residential users;
- (C) those being deployed in public telecommunications networks by public carriers;
- (D) those which are consistent with the public interest, convenience, and necessity.<sup>14</sup>

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<sup>11</sup> 201 F.3d at 614-615, quoting 47 U.S.C. § 151 (as amended).

<sup>12</sup> 47 U.S.C. § 254(c)(1).

<sup>13</sup> 47 U.S.C. § 254(b).

<sup>14</sup> 47 U.S.C. § 254(c)(1) (A) - (D).

While these are statutory criteria, it is clear that the Commission has wide discretion in interpreting and applying them. In its 1997 Report and Order defining “core” or “designated” services that will be supported by universal service support mechanisms, the Commission found that the four above-listed criteria “must be considered, but not each necessarily met, before a service may be included within the general definition of universal service, should it be in the public interest.”<sup>15</sup>

Factor (A) is plainly met for those members of the public who cannot effectively or efficiently communicate over ordinary telephone equipment and a simple voice grade line. With respect to all three elements of criteria (A), enhanced services of some sort are vital for communications to occur. In regard to factor (B), although TDI believes neither Braille TTY nor 2LVCO is in widespread use at the present time due to their cost, no reliable data exist about the extent of such use. However, a rigid application of this criterion would simply preclude any assistance for those with disabilities since they do not constitute a substantial (or any) majority of residential customers. In this connection, the progressive nature of these disabilities and the well-documented aging of the U.S. population mean that the segment of the public in need of these devices is likely to increase with the passage of time. As to (C), 2LVCO is being deployed, but Braille TTY, due to its very high cost, is not currently in significant use. Finally, as to item (D), consistency with the public interest, TDI submits that if there is a public interest justification for those with disabilities to be able to communicate with each other and with the general public — and such public interest should be beyond dispute — then applying Universal Service Funds to such uses is justified on its face.

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<sup>15</sup> Report and Order, *Federal State Joint Board on Universal Service*, 12 FCC Rcd 8776 (1997), ¶ 61 (subsequent history omitted; footnote omitted).

Accordingly, applying these factors to the circumstances of those with disabilities easily justifies the conclusion that reasonable accommodation of their needs for enhanced communications capabilities comfortably fits within the statutory criteria. Simply put, for a person with significant hearing or sight disabilities, telephone service is not “universal” so far as that individual is concerned, if he or she cannot communicate. Indeed, it is the opposite of universal: it is nonexistent. Congress could not have intended this result.

**B. For Americans With Disabilities, the Present Definition of Voice-Grade Service Is Inadequate**

The same result is reached by analyzing the problem from the perspective of defining voice grade service. In the 1997 Report and Order the Commission provided an extensive discussion of the scope of voice-grade service for universal service purposes, and concluded, *inter alia*, that such service must include voice grade access to the public switched network:

Voice grade access to the public switched network is an essential element of telephone service... . In addition, we find voice grade access to be essential to education, public health, and public safety because it allows consumers to contact essential services such as schools, health care providers, and public safety providers.<sup>16</sup>

The applicability of this analysis to those members of the public with disabilities is striking. If voice grade access to the public switched network is essential to the public as a whole, how much more essential is it to those Americans who, by virtue of a variety of disabilities, may have more urgent need to communicate in emergencies.<sup>17</sup> Noteworthy in this context is the

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<sup>16</sup> Report and Order, ¶ 63. *See also Federal-State Joint Board on Universal Service*, Order, 15 FCC Rcd 25257 (2000), the *Referral Order*, 15 FCC Rcd at 25258, and Public Notice seeking comments on a redefinition of “Voice Grade Access,” DA 99-2985, *rel.* December 22, 1999.

<sup>17</sup> The Report and Order also concludes that DTMF signaling and equivalent digital signaling mechanisms are among the services which justify support by federal universal service mechanisms. *See id.* at ¶ 71. The Commission there found that DTMF signaling is “a potential life- and property-saving mechanism because it speeds access to emergency services.” *See also* ¶¶ 72 and 73 including access to emergency services as justifying universal service support.



Commission’s decision to exclude the information service component and network transmission components of Internet access from support under section 254(c)(1) on the ground that they are not “*essential* to education, public health, or public safety.”<sup>18</sup> Nothing could be more essential than the simple need to be able to use a voice grade line and function normally in the community.

**C. The Costs Associated With Adding Braille TTY Equipment and Necessary Services for 2LVCO To The Existing Core Services Would Be Minimal**

The Notice asks commenters to estimate the costs which would be associated with adding services to the “core” services for USF purposes including the implications of any proposed modifications required by section 214(e)(1)(A).<sup>19</sup> TDI believes that the costs of including these vital services in the “core” service category would not be substantial. Although Braille TTY equipment is, as noted above, quite expensive for an individual, government support for such costs — even a portion of such costs — might stimulate additional commercial production, a development which could be expected to sharply reduce the production costs and therefore prices to individual users. Apart from this consideration, however, the fact is that there is not an enormous market for such machines. Because they are complex and require careful operator training for effective use, it is reasonable to anticipate that only a percentage of those who could qualify for such cost reduction would actually seek it. It is also possible that USF support for such equipment would stimulate state and local programs to contribute funds to further reduce the cost. Finally, it is likely USF funding would stimulate additional manufacturers to enter, or

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<sup>18</sup> *Id.* at ¶ 83 (emphasis in original).

<sup>19</sup> 47 U.S.C. § 214(e)(1)(A).

in some cases known to TDI, reenter the Braille TTY market, thereby reducing prices through competitive pressures.

The same general considerations apply in the case of 2LVCO. While high volume production price decreases are not likely to occur, the availability of specially reduced service packages consisting of two line service plus conferencing capability might be enhanced by USF funding, and this in turn might permit carriers to offer the service at lower costs.

### **III. SOLE RELIANCE ON SECTION 255 OF THE ACT FOR THE PROVISION OF SERVICES TO THOSE WITH DISABILITIES DEROGATES FROM THE PLAIN PURPOSE OF SECTION 254 AND MISCONCEIVES CONGRESSIONAL INTENT**

In the 1997 Report and Order the Commission declined to consider the inclusion of services and facilities essential to provide universal service to those with disabilities in its analysis of section 254 of the Act on the ground that such users' needs would be addressed in the application of section 255.<sup>20</sup> "Although we are mindful of the commenters' concerns regarding the affordability of, and access to, telecommunications services by individuals with disabilities, we find that those concerns are more appropriately addressed in the context of the Commission's implementation of section 255."<sup>21</sup> TDI respectfully suggests that this conclusion is erroneous as a matter of law, and ill-considered in any event. It is entirely appropriate for the Commission, in assessing means and methods for meeting the needs of the 28 million Americans with hearing disabilities — some 10% of the general population — to draw upon all relevant statutory principles and grants of authority, rather than to rely narrowly on only one approach to the exclusion of others.

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<sup>20</sup> *Id.* at ¶¶ 53 and 84, the former agreeing with the recommendation to this effect in the Joint Board's Recommended Decision, Federal State Joint Board, Recommended Decision, 12 FCC Rcd 87, at ¶ 24.

<sup>21</sup> *Ibid.*

**A. Section 255 Is Addressed to Manufacturers of Equipment and Service Providers**

Section 255 of the Act imposes obligations on manufacturers of equipment and telecommunications services providers. These provisions have proven very valuable to those with disabilities, and TDI fully recognizes the enormous importance of this section. On the other hand, recognition of that importance does not in any way mean that the special needs of those with disabilities can be ignored in interpreting section 254 whose purpose is far broader and more generic. Section 254 approaches the issue of the provision of service(s) to all Americans in the context of federal support mechanisms. It looks at a variety of services and mechanisms and seeks to achieve a balance between meeting the needs of those in rural areas or difficult circumstances through the prudent application of support mechanisms. This approach is not mutually inconsistent with that set forth in section 255. On the contrary, it is complementary, and there is accordingly no warrant for concluding that the Commission need not consider the special needs of individuals with disabilities in assessing the impact of section 254 on the public.

The fact is that the equipment industry, which has a legitimate profit-making orientation, can do only so much to meet the needs of those with disabilities. TDI appreciates the efforts industry has been making since 1996, but those efforts are not sufficient, and the universal service support mechanisms contemplated in section 254 can, and should, materially contribute to accommodating the special needs of individual users with disabilities. Stated differently, section 255 addresses the efforts only of manufacturers and service providers, whereas section 254 addresses the full panoply of potential sources of assistance, as Congress intended. The Commission cites no language in the legislative history of the 1996 Act to justify its rigid compartmentalization of sections 254 and 255, and TDI is not aware of any which can fairly be interpreted in that fashion. There is nothing in the Act which specifies that the Commission

cannot look to both sections to achieve a result it considers to be in the public interest. Indeed, doing so would help to allocate financial burdens across a wider segment of the public so as to avoid an undue burden on any one sector of the public.<sup>22</sup>

**B. The Statutory Criteria By Which Assistance To Those With Disabilities Is To Be Measured Are Entirely Distinct**

That these two statutory provisions are both properly invoked in the effort to bring adequately provisioned and priced telecommunications services to the public is underscored by their differing approaches to the issue. Section 254, by its design and structure, makes assistance a matter of national policy; section 255 simply imposes the obligation to help on two limited classes of the public: equipment manufacturers and telecommunications service providers. TDI recognizes that there are many conflicting demands on USF resources and that the Commission must weigh and balance the needs of many sectors of the public. As the Commission notes, an overly expansive definition of core services could adversely affect all consumers by increasing the basic cost of service to all users.<sup>23</sup> But this is just another reason why the Commission should approach the issue of including the needs of those with disabilities in its universal service docket together with its ongoing administration of section 255: doing so spreads financial burdens more widely and by doing so increases the likelihood that the basic telecommunications needs of those with disabilities will be recognized.

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<sup>22</sup> In similar fashion, the cost recovery system mandated by section 225 of the Act, 47 U.S.C. § 225, with respect to relay services, in no way precludes addressing the broader issue of funding through the USF for adequate telecommunications services of all kinds. *See Recommended Decision*, at ¶ 24.

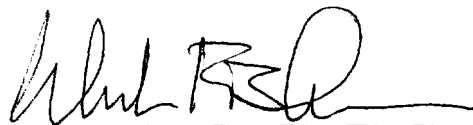
<sup>23</sup> Report and Order, at ¶ 64.

#### IV. CONCLUSION

TDI , NAD, CAN, SHHH, and the Braille TTY Task Force recognize that there are competing needs for USF funds and that those funds must be carefully husbanded to avoid undercutting the economic basis for the USF superstructure. Nevertheless, it urges the Commission to reconsider its determination not even to consider funding equipment and services vital for those with disabilities from the USF. Without in any way denigrating the importance of other special needs, those with hearing or sight disabilities are worthy of broad support in the USF context. Nor does TDI seek a massive redistribution of USF funds since it believes the costs necessary to make a meaningful improvement in the availability of Braille TTY or 2LVCO would be relatively modest. Indeed, more important than the initial amount of the funding would be the decision to include such facilities or services in the "core" group so that, as USF decisions in the future are made, the needs of those with disabilities will not be ignored.

Respectfully submitted,

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